

PROFESSIONAL SERVICES CONTRACT

This contract, made as of the ____ day of March, 2019 by and between the City of Buffalo, a municipal corporation organized and existing under the laws of the State of New York with its principal office at 65 Niagara Square, Buffalo, New York 14202 (hereinafter the "City") through its Department of Administration, Finance, Policy & Urban Affairs and Government Action Professionals, Inc. doing business as Masiello, Martucci, Calabrese and Associates with offices located at 438 Main Street, Suite 500, Buffalo, New York 14202 (hereinafter the "Contractor").

WITNESSETH:

WHEREAS, on January 28, 2019, the City issued a Request for Proposals for State Government Relations Services, the same being incorporated herein and made a part hereof as Exhibit A.

WHEREAS, on February 6, 2019, the Contractor submitted a proposal to the City to perform the solicited services, and the proposal has been found generally acceptable by the City and is incorporated herein and made a part hereof as Exhibit B; and

WHEREAS, on _____, 2019, the Buffalo Common Council pursuant to its passage of Item No. _____, has authorized the award of the contract to the Contractor and has authorized the Department of Administration, Finance, Policy & Urban Affairs to execute this contract for the performance of solicited services by the Contractor; and

WHEREAS, the City deems that it is necessary and in the City's best interests to contract for such services and the Contractor has agreed to perform such services for the City;

NOW, THEREFORE, in consideration of the mutual agreements set forth herein the parties agree as follows:

1. CONTRACT DOCUMENTS

Section 1.1 Incorporations

The agreement between the parties shall consist of this document and the following Exhibits which are attached hereto and made a part hereof, which together constitute the contract:

- a) Exhibit A: City Request for Proposals
- b) Exhibit B: Contractor's Proposal
- c) Exhibit C: Conflict of Interest Statement

Section 1.2 Conflicts and Priority of Documents

In the event that a conflict is found between provisions in this contract and the Request for Proposals or the Contractor's Proposal, the provisions in the following rank order shall take precedence: 1) Contract; 2) Request for Proposals; and 3) Contractor's Proposal.

All of the terms and provisions and all attachments and components of the specifications comprising the Contractor's proposal are incorporated into this contract by this reference. In the event of any and all inconsistencies between the terms and provisions of this contract, including

also the Request for Proposals, and the terms and provisions of the Contractor's proposal, the terms and provisions of this contract, including also the Request for Proposals, shall control.

2. SCOPE OF WORK

Contractor warrants that it is duly registered with the New York State Joint Commission on Public Ethics (JCOPE) and that it will abide by the Lobbying Act in the performance of its duties and the public disclosure of its identity, activities, and expenditures. Contractor understands and agrees that the City is relying upon its advice, expertise, and experience and that those factors, amongst others, were material considerations in the City's selection of Contractor to perform the services. Contractor warrants that it is qualified to perform the services and assumes the role, duties and obligations of the City, which include but are not limited to: providing advice on legislative and governmental strategy, monitoring legislative and agency activities, identifying revenue generating opportunities, providing input on City's annual State legislative agenda, and providing advice and advocacy on issues identified by the City of Buffalo. Contractor agrees to perform the services subject to all the terms and conditions set forth in this Contract, including, but not limited to, all exhibits, in a manner consistent with the highest level of care and skill and in accordance with the general directions given by the Commissioner of the Department of Administration, Finance, Policy & Urban Affairs or her designee, and that such services shall be performed in a timely manner.

3. TERM/COMPENSATION

The term of this contract shall be for the period of one year commencing on _____ and terminating _____. That Contractor shall be compensated for its services in an amount not exceed sixty thousand dollars (\$60,000). This fee shall be paid in twelve (12) equal monthly installments of five thousand dollars (\$5,000) each.

This contract may be extended upon mutual agreement of the parties, for four (4) additional periods of one year each. Any extension entered into must be in writing, with all terms remaining the same.

4. APPROPRIATION

The parties recognize, acknowledge and agree that the obligations of the City under this contract, or any renewals thereof are subject to annual appropriation by the Common Council. Therefore, this contract shall be deemed executory only to the extent of the monies have been appropriated and available. The City shall have no liability beyond monies available and appropriated for payment under this contract.

Payment made under this contract constitutes the full and complete payment for all costs assumed by Contractor in performing the services described herein including, but not limited to, salaries, costs of materials and supplies, printing and reproduction, attendance at meetings, consultations and presentations, clerical costs, travel expenses, postage, telephone, and all similar expenses. No direct costs shall be reimbursed by the City without specific prior written approval of the City prior to their expenditure and, in any event, payment of such expenses may not exceed the maximum compensation amount set forth herein, except as provided herein.

5. TERMINATION

The City reserves the unilateral right to terminate this contract at any time, with or without cause, by providing Contractor with thirty (30) days written notice of such termination.

If termination shall be without cause, the City's liability shall be limited to paying for the services provided up to the point of termination. If the termination shall be for breach by the Contractor, then the City shall pay all compensation earned prior to the date of termination minus any damages and costs incurred by the City as a result of the breach.

Notwithstanding the above, the Contractor shall not be relieved of liability to the City for damages sustained by the City as a result of any breach of the contract. The City may, in such event, withhold payments due to the Contractor for the purpose of set-off until such time as the exact amount of damages due to the City is determined. The rights or remedies provided for herein shall not limit the City, in case of any breach by the Contractor, from asserting any other right or remedy allowed by law or in equity.

6. NOTICES

Any notice(s) required or permitted under this contract, including notice of termination, shall be sent to the appropriate party by certified mail return with receipt requested, or by overnight carrier to the following addresses:

To City:
Donna J. Estrich
Commissioner
Department Administration, Finance, Policy
& Urban Affairs
203 City Hall
Buffalo, New York 14202

To Contractor:
Anthony M. Masiello
President
Masiello, Martucci, Calabrese & Associates
438 Main Street, Suite 500, Buffalo, New
York 14202

Either party may, from time to time designate, by written notice, pursuant to this section another address or representative to which such notice or communications should be sent.

7. INDEMNIFICATION

Contractor shall indemnify, defend and hold harmless the City, its officers, agents, servants and employees, from and against any and all claims, demands, damages, suits, proceedings, liabilities, judgments, losses, costs of every name, nature, and description, including attorneys' fees, to which the City may be subjected by reason of any injury to the person or property of another, or the property of the City, resulting from the negligence or carelessness, active or passive, of the Contractor, its employees, agents or subcontractors, in the performance of any work under this contract. This provision shall include, all losses, costs, and damages, which the City may suffer as a result of any negligent supervision of services or by reason of injury to the person or property of another, or the property of the City, resulting from the negligence or carelessness, active or passive, of the Contractor its or their employees, agents, or subcontractors, or the joint negligence, active or passive, of the Contractor and others, in the performance under this contract.

In addition to and in furtherance of the foregoing indemnity, the insurance coverage described herein must include language that states that the insurance carrier will defend the City for any and all claims arising or resulting from this contract. Furthermore, the whole or so much money to become due under this contract or as shall be considered necessary by the City, may be retained by it until all suits or claims for damages shall have been settled or otherwise disposed of and evidence to that effect furnished to the satisfaction of the City. The provisions of this section shall survive the expiration or termination of this contract. The City shall not be limited by reason of any insurance coverage provided hereunder or the limits of any insurance requirements.

8. INSURANCE

The City requires insurance coverage as listed below for this service. The term "Contractor" shall also include the contractor, their respective agents, representatives, employees or subcontractors; and the term "City of Buffalo" (hereinafter called the "City") shall include their respective officers, agents, officials, employees, volunteers, boards and commissions. The insurance required shall be written for not less than the scope and limits of insurance specified hereunder, or required by applicable federal, state and/or municipal law, regulation or requirement, whichever coverage requirement is greater. It is agreed and understood that the scope and limits of insurance specified hereunder are minimum requirements and shall in no way limit or exclude the City from additional limits and coverage provided. Coverage shall be primary and non-contributory.

All policies of insurance shall be provided by a company or companies admitted and authorized to do business in the State of New York. Before commencing the work, Contractor shall furnish to the City the certificates of insurance, and shall thereafter provide renewal certificates, as appropriate, evidencing such coverage written by a company or companies acceptable to the City. All certificates of insurance shall be subject to the approval of the Corporation Counsel of the City as to form and the City of Buffalo Comptroller as to sufficiency. Such certificates and renewal certificates shall provide for a notice of cancellation, lapse or restrictive amendment of at least thirty (30) days. If such insurance is written on a "claims made" basis then such insurance shall be kept in full force and effect for three (3) years after final payment to the Contractor.

For purposes of this contract, all insurance certificates required must be mailed to:

City of Buffalo Division of Purchase
William Sunderlin, Director of Purchase
65 Niagara Square
Room 1901 City Hall
Buffalo, New York 14202

SECTION 8.1 MINIMUM SCOPE AND LIMITS OF INSURANCE

i.) Workers' Compensation & Disability Insurance:

With respect to all operations the Contractor performs, the Contractor shall maintain Workers' Compensation Insurance and Disability Insurance in accordance with the requirements of the laws of the State of New York. Evidence of Workers' Compensation Insurance and Disability Insurance must be provided on the New York State approved. The Accord form is not acceptable. Each certificate of insurance evidencing such coverages shall be submitted by the Contractor and must name the City of Buffalo as certificate holder on said certificates of insurance.

ii.) Commercial General Liability:

With respect to all operations the Contractor performs, the Contractor shall maintain Commercial General Liability insurance providing for a total limit of not less than one million dollars (\$1,000,000) per occurrence. Each annual aggregate limit shall not be less than two million dollars (\$2,000,000). A certificate of insurance evidencing such coverage shall be submitted by the Offeror and must name the City of Buffalo as additional insured and certificate holder under said policy. The City of Buffalo must also be named as an additional insured under any excess/umbrella liability policies.

iii.) Commercial Automobile Liability:

With respect to any owned, non-owned, or hired vehicles the Contractor shall carry Automobile Liability insurance providing at least one million dollars (\$1,000,000) per accident for bodily injury and property damage. A certificate of insurance evidencing such coverage shall be submitted by the Contractor and must name the City of Buffalo additional insured and certificate holder.

iv.) Professional Liability:

With respect to any damage caused by an error, omission or any negligent acts of the Contractor performed under this contract the Contractor shall carry Professional Liability insurance providing at least one million dollars (\$1,000,000) per claim for any wrongful act. A certificate of insurance evidencing such coverage shall be submitted by the Contractor and must name the City of Buffalo as certificate holder.

v.) "Tail" Coverage:

If any of the required liability insurance is on a "claims made" basis, "tail" coverage will be required at the completion of this Contract for a duration of three (3) years, or the maximum time period reasonably available in the marketplace. Contractor shall furnish certification of "tail" coverage as described or continuous "claims made" liability coverage for three (3) years following contract completion. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage provided its retroactive date is on or before the effective date of the pertinent contract. If continuous "claims made" coverage is used, Contractor shall be required to keep the coverage in effect for the duration of not less than three (3) years from the end of the contract.

SECTION 8.2 ACCEPTABILITY OF INSURERS

All of Contractor's insurance policies shall be written by insurance companies licensed in the State of New York and admitted in the State of New York or otherwise acceptable to the City's Comptroller in his sole discretion.

SECTION 8.3 SUBCONTRACTORS

The Contractor shall require subcontractors to provide the same "minimum scope and limits of insurance" as required herein, with the exception of Errors and Omissions/Professional Liability insurance, unless Errors and Omissions/Professional Liability insurance is applicable to the work performed by the subcontractor.

SECTION 8.4 AGGREGATE LIMITS

Any aggregate limits must be declared to and approved by the City. It is agreed that the Contractor shall notify the City when fifty percent (50%) of the aggregate limits are eroded during the contract term. If the aggregate limit is eroded for the full limit, the Contractor agrees to reinstate or purchase

additional limits to meet the minimum limit requirements stated herein. The premium shall be paid for by the Contractor. Deductibles and Self-Insured Retentions: Any deductible or self-insured retentions must be declared to and approved by the City. All deductibles or self-insured retentions are the sole responsibility of the Contractor to pay and/or to indemnify.

SECTION 8.5 NOTICE OF CANCELLATION OR NONRENEWAL

Each insurance policy required shall be endorsed to state that coverage shall not be suspended, voided, cancelled, or reduced in coverage or in limits except after 30 days prior written notice has been given to the City.

SECTION 8.6 WAIVER OF GOVERNMENTAL IMMUNITY

Unless requested otherwise by the City, the Contractor and his insurer shall waive governmental immunity as defense and shall not use the defense of governmental immunity in the adjustment of claims or in the defense of any suit brought against the City.

9. RELATIONSHIP OF THE PARTIES

Contractor and the City agree that Contractor is an independent contractor, and not an employee of the City and that in accordance with such status as an independent contractor, Contractor covenants and agrees that it will not hold itself out as, nor claim to be, an officer or employee of the City, including but not limited to: worker compensation coverage, unemployment insurance benefits, social security coverage, medical, dental or health insurance coverage, or employee retirement membership or credit by reason of this contract.

Contractor shall not have the authority to bind or contract for the City, or any Department agency or unit thereof, or to make or incur indebtedness, liability or obligation on behalf of the City, or any department, agency or unit thereof.

This contract shall not be construed as creating an exclusive contract for services. The City retains the right to contract with others to provide like or similar services. Contractor retains the right to provide such services to parties other than the City in its sole discretion.

10. PRIME CONTRACTOR RESPONSIBILITY

All subcontractors shall be subject to prior approval by the City. Prior to contract execution, the Contractor will be required to furnish the corporate or company name and the names of the officers and principals of all subcontractors. Notwithstanding any such approval by the City, the Contractor shall itself be solely responsible for the performance of all work set forth in this contract and for compliance with the price and other terms provided herein. The Contractor shall cause the appropriate provisions of its proposal and this contract to be inserted in all subcontracts.

The City's consent to or prior approval of any subcontract or subcontractor proposed by the Contractor shall not create or purport to create any obligation of the City to any such subcontractor, or any form of contractual relationship or relationship of privity between the City and the subcontractor. Upon approval or consent by the City, Contractor shall insert a clause so providing in all subcontracts.

11. PERFORMANCE MONITORING

All work performed by Contractor shall be subject to the approval and acceptance by the City or its designee. The City will monitor the performance of the Contractor against goals and performance standards required herein. The City or its designee shall review each portion of the work when certified as complete and submitted by the Contractor and shall inform the Contractor of any apparent deficiencies, defects, or incomplete work, at any stage of the project. Substandard performance as determined by the City will constitute non-compliance under this contract. If action to correct such substandard performance is not taken by the Contractor within a reasonable period of time after being notified by the City, contract termination procedures will be initiated.

12. RECORDS/RETENTION/INSPECTION

All finished or unfinished documents, data, studies, surveys, maps, models, photographs, reports or other materials arising from this contract shall, at the option of the City, become the property of the City, and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents or materials prior to the conclusion or of the contract. The City may use, extend, or enlarge any document produced under the contract without the consent, permission of, or further compensation to the Contractor.

All reports, including preliminary findings, interim reports, final recommendations and the work product thereof, shall be the exclusive property of the City of Buffalo; and any duplication, publishing or other use thereof by any person, including the Contractor, without the prior, expressed, written authorization of the City, is strictly prohibited.

Contractor further agrees that all records arising from or relating to work performed for the City under this contract shall be maintained for a period not less than three (3) years after the expiration or termination of this contract.

Section 12.1 Retention of Records

Contractor shall retain all records, including records pertinent to expenditures incurred under this contract for a period of three years after the resolution of all audit findings. Records for non-expendable property acquired with funds under the contract shall be retained for three years after final disposition of such property.

Section 12.2 Inspection of Records

All records with respect to any matters covered by this contract shall be made available to the City or its designees at any time during normal business hours, as often as the City deems necessary, to audit, examine, and make excerpts or transcripts of all relevant data.

13. GENERAL MUNICIPAL LAW §109: ASSIGNMENT OF CONTRACTS

In accordance with General Municipal Law §109 you are hereby prohibited from assigning, transferring, conveying, subletting or otherwise disposing of this contract, or of any right, title, or interests herein, or the power to execute such contract, to any other person or corporation without the previous consent in writing of the City.

If any contractor, to whom any contract is let, granted or awarded, as required by law, shall without the previous written consent of the City, assign, transfer, convey, sublet or otherwise dispose of this

contract, or any right, title or interest therein, or the power to execute such contract, to any other person or corporation, the City shall have the unilateral right to revoke and annul such contract, and the City shall be relieved and discharged from any and all liability and obligations growing out of such contract to such contractor, and to the person or corporation to which such contract shall have been assigned, transferred, conveyed, sublet or otherwise disposed of, and such contractor, and his assignees, transferees or sub-lessees shall forfeit and lose all moneys, theretofore earned under such contract, except so much as may be required to pay his employees. The provisions of this section shall not hinder, prevent, or affect an assignment by any such contractor for the benefit of his creditors made pursuant to the laws of the State of New York.

14. GENERAL MUNICIPAL LAW §103-D: NON-COLLUSION

In accordance with General Municipal Law §103-d, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that it was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, and authorized and responsible person executed and delivered to the City a non-collusive bidding certification on Contractor's behalf. In this connection, it should be noted that the fact that a bidder has published price lists, rates or tariffs covering items being procured or has informed prospective customers of the proposed or pending publication of new or revised price lists for such items, or has sold the same items to other customers at the same price as being bid, does not constitute, without more, a disclosure to any other bidder or to any competitor within the meaning of the non-collusive certification included in the form of proposal.

15. NON-DISCRIMINATION

Contractor shall not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sexual orientation, gender identity or expression, military status, age, sex, disability, marital status, or familial status. Such prohibition against discrimination shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship.

Contractor shall agree to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the City, setting forth this nondiscrimination clause. In addition, the Offeror(s) shall, in all solicitations or advertisements for employees placed by or on behalf of the Offeror(s), state that all qualified applicants will receive consideration for employment without regard to race, creed, color, national origin, sexual orientation, gender identity or expression, military status, age, sex, disability, marital status, or familial status, and comply in all other aspects with the requirements the Buffalo City Code and Ordinances.

16. CITY OF BUFFALO LIVING WAGE

Contractor shall comply with the Living Wage Ordinance of the City of Buffalo (Buffalo City Code § 96-19), if applicable. The ordinance applies to contracts in which the City pays or receives over \$50,000 and the employer has at least ten (10) employees. It does not apply to contracts for professional services. Compliance includes:

- ✓ Paying all covered employees a living wage. Covered employees are all employees, full or part-time, employed in, on, or for the project or matter subject to the contract, except

persons employed in construction work covered pursuant to federal or state prevailing wage laws.

- ✓ Submitting quarterly reports to the Living Wage Commission, including the name, address, classification, period of employment and wage rate of all employees covered by the ordinance.
- ✓ Posting two (2) copies of the Ordinance or a summary approved by the Living Wage Commission in conspicuous places where notices to employees and applicants for employment are customarily posted.
- ✓ Informing employees making less than \$12 per hour of their possible right to the Federal Earned Income Credit and making available forms required to secure advance Earned Income Credit payments from Contractor.

Contractor's violation of the ordinance will enable any aggrieved employee to file an action against the contractor for damages and/or a grievance with the City's Living Wage Commission. The City has the discretion to terminate the contract and pursue any other legal remedies if Contractor fails to comply with the ordinance.

17. CONFLICT OF INTEREST

Contractor represents that none of its employees, officers, compensated members, or consultants benefiting from this contract are or for the duration of the term of this contract will be employees of the City nor are their immediate family members employees of the City nor will their employees, officers, compensated members, or consultants obtain a financial interest under the terms of this contract, either for themselves or those whom they have immediate family or business ties, during their tenure or for one year thereafter, unless such potential conflict is identified and waived by the City.

Violation of the terms of this section of contract may warrant termination of this contract. Contractor shall report all conflicts of interest for review by the Commissioner by the submission of the report enclosed as Exhibit C.

18. CONFIDENTIALITY

Contractor agrees that all records and information obtained either directly or indirectly by reason of this contract and the work performed thereto, shall not be sold, divulged, disclosed or communicated in any manner whatsoever to any third party without the prior written consent of the City. Contractor agrees to comply with all applicable Federal and State laws and regulations governing the use and rights of access to City records and information. These provisions shall remain in full force and effect for an indefinite period even after the termination of this contract.

19. APPLICABLE LAW

Contractor shall comply with all laws, rules, regulations and ordinances of the U.S. Government, the State of New York, and the City of Buffalo, including but not limited to the City Living Wage ordinance; and any other political subdivision of regulatory body which may apply to its performance under this contract. This contract shall be governed by the laws of the State of New

York. Prior to the commencement of any proceeding against the City related to this contract, the Contractor shall provide the City with written notice stating the general nature of each claim, dispute, or other matter within twenty (20) days of the event giving rise to the claim. For all purposes of this contract, the parties submit themselves to the jurisdiction of the Supreme Court of the State of New York, County of Erie, City of Buffalo and consents that any and all litigation shall be in such court. Further, all proceedings relating to any disputes, including but not limited to, arbitrations, motions, mediations, depositions, meetings, and trials shall be held in Buffalo, New York.

20. SEVERABILITY

Each and every provision and clause required by law to be inserted in this contract shall be deemed to be inserted and the contract shall be read and enforced as though such provisions and clauses were included herein. If, through mistake or otherwise, any provision is not inserted or is not correctly inserted then, upon the written consent of the parties, this contract shall forthwith be physically amended to make such insertion. If any provision of this contract shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of the contract is invalid or unenforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

21. WAIVERS

The failure of either party to enforce any provision of this contract shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this contract.

22. PRIOR APPROVALS

The terms of this contract, including any and all extensions, modifications, or amendments thereto, shall be subject to the prior approval of the Buffalo Common Council, approval as to form by the Corporation Counsel, and appropriation by the City Comptroller.

23. AMENDMENT

This contract may be modified or amended if the modification or amendment is made in writing and executed by both parties subject to all municipal approvals.

24. ENTIRE AGREEMENT

This contract represents the entire agreement of the parties and there are no other promises or conditions in any other agreement either oral or written. This contract supersedes any prior written or oral agreement between the parties.

IN WITNESS WHEREOF, the City and Contractor have caused this contract to be executed.

THE CITY OF BUFFALO

CONTRACTOR

Date

Date

Donna J. Estrich
Commissioner
Department Administration, Finance,
Policy & Urban Affairs

Anthony M. Masiello
President
Government Action Professionals, Inc.
DBA Masiello, Martucci, Calabrese &
Associates

APPROVED AS TO FORM ONLY:

02/28/2019

Date


Cavette A. Chambers
Senior Deputy Corporation Counsel